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TRANSCRIPT OF PROCEEDINGS

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

IN THE MATTER OF:

BENCHMARK COMMUNICATIONS CORPORATION  
Chatom, Alabama

MM DOCKET NO. 94-47

DATE OF HEARING: June 22, 1994

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FREE STATE REPORTING, INC.  
Court Reporting Depositions  
D.C. Area (301) 261-1902  
Balt. & Annap. (410) 974-0947

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

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 In the matter of: )  
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 BENCHMARK COMMUNICATIONS CORPORATION )  
 Chatom, Alabama )  
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Docket No. 94-47

The above-entitled matter came on for conference pursuant to Notice before Judge Edward Luton, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 2, on Wednesday, June 22nd, 1994, at 9:05 a.m.

**APPEARANCES:**

On behalf of Benchmark Communications Corporation:

JOHN MEYERS, ESQUIRE

On behalf of Hap-Hazard Broadcasting Company:

ANN C. FARHAT, ESQUIRE  
 Bechtel & Cole, Chartered  
 Suite 250  
 1901 L Street, NW  
 Washington, D.C. 20036

On behalf of Chief, Mass Media Bureau:

JAMES W. SHOOK, ESQUIRE  
 Mass Media Bureau  
 2025 M Street N.W., Suite 7212  
 Washington, D.C. 20554

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25	Hearing began: 9:05 a.m.	Hearing Ended: 9:10 a.m.

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## P R O C E E D I N G S

JUDGE LUTON: Mr. Meyer, are you on?

MR. MEYERS: Yes, good morning, sir. How are you?

JUDGE LUTON: Good morning. Just fine. All right, we're ready then. Let's have appearances, please, starting on my left.

MS. FARHAT: Yes, Your Honor. I'm not technically a -- good morning. I'm not technically a party in this proceeding at this point in time, but my name is Ann C. Farhat and I'm with Harry F. Cole. We are counsel for Hap-Hazard Broadcasting Company.

JUDGE LUTON: Okay.

MR. SHOOK: James Shook for the Chief, Mass Media Bureau.

JUDGE LUTON: All right. And Ms. Meyer, who is appearing for Benchmark?

MR. MEYERS: I am. John Raymond Meyer, spelled M-E-Y-E-R-S.

JUDGE LUTON: Thank you. What I want to do this morning was set some dates for the further progress of this, this case and that's primarily it. Before I do, let me just take note of Ms. Farhat's presence here this morning and address what I think it's all about. I believe it's in connection with a petition to intervene filed by Hap-Hazard on June the 7th. That petition has been opposed by both

1 Benchmark and by the Bureau and quite frankly I thought that  
2 the oppositions were pretty -- were really quite persuasive  
3 and I'm prepared to deny that Petition to Intervene for the  
4 reason that I don't think, as the Bureau points out, that the  
5 assertions made there meet the requirements of either Section  
6 A or B of the Rules, the Rule being 1.223. Doesn't say  
7 anything about interference, doesn't say anything about how  
8 the participation of Hap-Hazard might be expected to assist  
9 the commission in the resolution of the designated issues.  
10 Well, it, it says what it says, the petition does, and in my  
11 opinion it doesn't say very much. Certainly not enough to  
12 warrant intervention and I'm not going to receive discussion  
13 on that petition this morning so that it might be revived by  
14 that discussion. Instead, I'm going to rule on the paper  
15 that's before me, namely, that Petition to Intervene filed  
16 June 7 by Hap-Hazard. I see that the Mass Media Bureau has  
17 begun its discovery. How is that proceeding, Mr. Shook?

18 MR. SHOOK: Your Honor, we have sent our request for  
19 admissions and for genuineness of documents. There is still  
20 time before responses are due on those and I was not going to  
21 conduct further discovery until, you know, I had Your Honor's  
22 imprimatur because in cases I've had with you in the past in  
23 these situations generally you like to, you know, set some  
24 dates and give everybody a chance to understand what's going  
25 on here before we get started. So -- but once dates are set I

1 have, I have every intention of requesting documents and then  
2 Mr. Meyers and I have discussed informally the taking of his  
3 deposition and that is what I anticipate the discovery being  
4 right now.

5 JUDGE LUTON: All right. The hearing is scheduled  
6 for October 18. That gives us lots of time for discovery and  
7 whatever else needs to be done. I am going to suggest dates  
8 for each side to let the other side know what witnesses that  
9 each side intends to call on the direct cases. And I'm going  
10 to suggest a date for the exchange of exhibits, exhibits  
11 meaning the written testimony of the witnesses who will  
12 testify. The hearing is scheduled for October the 18th. I  
13 expect we'll be able to keep that date. A week prior to that  
14 I think would be time enough for witnesses to be named, each  
15 side to be informed of the witnesses that are to be called by  
16 the other side. Approximately two weeks before that,  
17 approximately September 30, I'm going to ask that the parties  
18 exchange their written exhibits in the case. So that we'll  
19 have exhibits exchanged September the 30th, exhibits will be  
20 reviewed, witnesses will be named October the 11th and we'll  
21 go to hearing on October the 18th. How are those dates?  
22 Mr. Meyers?

23 MR. MEYERS: Sounds very good to me, sir.

24 JUDGE LUTON: All right. Mr. Shook.

25 MR. SHOOK: It's acceptable, Your Honor.

1 JUDGE LUTON: All right. I'm not quite sure I  
2 understood what you were saying, Mr. Shook, about not  
3 proceeding with discovery -- more discovery, you're waiting  
4 for something to happen. Was it the setting of these dates?

5 MR. SHOOK: In part, Your Honor, and also in part I  
6 wanted to receive the admissions and the statements --

7 JUDGE LUTON: You wanted to responses to what you've  
8 already --

9 MR. SHOOK: I do.

10 JUDGE LUTON: Yeah, okay, but now you're intending  
11 to proceed?

12 MR. SHOOK: I am.

13 JUDGE LUTON: All right, fine.

14 MR. MEYERS: Your Honor?

15 JUDGE LUTON: Yes, sir.

16 MR. MEYERS: I am intending to put the answers to  
17 those admissions in the mail or in Federal Express this  
18 afternoon.

19 JUDGE LUTON: Okay. So long -- I would only ask  
20 that you do it within the time that the, that the rules allow.  
21 I don't intend to press you on that at all since I don't know  
22 where we are really with respect to the running of the time.  
23 If you're prepared to make the responses go right ahead. Does  
24 anyone have anything else that ought to be raised at this  
25 time? Thank you, Mr. Meyers.

1 MR. MEYERS: Thank you.  
2 JUDGE LUTON: Thank you, Mr. Shook.  
3 MR. SHOOK: Thank you, Your Honor.  
4 JUDGE LUTON: Thank you, Ms. Farhat.  
5 (Whereupon, matter adjourned at 9:10 a.m.)  
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IN RE APPLICATIONS CHATOM, ALABAMA

**Name**

MM DOCKET NO. 94-47

**Docket No.**

WASHINGTON, D.C.

**Place**

June 22, 1994

**Date**

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 7, inclusive, are the true, accurate and complete transcript prepared from the reporting by Alice Wehner in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

July 5, 1994

**Date**

James Lowell  
James Lowell, Transcriber  
Free State Reporting, Inc.

July 5, 1994

**Date**

Linda McCabe  
Linda McCabe, Proofreader  
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July 5, 1994

**Date**

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Alice Wehner, Reporter  
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